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Los Angeles Bar Association

BULLETIN



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AUGUST 15, 1935

Volume 10
Number 12

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IT HAS been truly said that anything that is worth doing at all is worth doing well. We strive to make our Los Angeles Bar Association typify everything that is good and fine in our local profession. The American Bar Association, at its annual meeting, seeks this same result nationally.

This year it fell to our lot to entertain the fifty-eighth annual meeting of the national association.

The American Bar Association arranges all of the details of its own program. It was our duty and pleasure to provide comfortable and adequate facilities and recreation and entertainment for our guests.

AMERICAN BAR ASSOCIATION

East
OFFICE OF THE PRESIDENT
SCOTT M. LOFTIN
GRANAM BUILDING
JACKSONVILLE, FLORIDA

July 30, 1935.

Dear Joe:

Now that I am back at my desk and have a few minutes respite, I desire to thank you and, through you, the members of the Los Angeles Bar Association for the most delightful and generous hospitality that has ever been extended to the American Bar Association within my experience, and I have been attending the meetings for something like twenty years.

The arrangements were perfect, the entertainment was enjoyed by everyone, and your hospitality has never been surpassed. While you might have thought that my statement relative to your hospitality, made in Los Angeles, was the expression of a guest, I enclose clipping from our Florida paper, from which you will observe that even when I returned to the soil of my own state I praised the members of your Association for their hospitality.

As it will not be possible for me to write the chairmen and members of committees who served so splendidly and acceptably in making this meeting outstanding, I hope that this may be read at one of your meetings and accepted by them as an expression from me of my deep gratitude for the splendid service rendered by everyone in making the occasion one long to be remembered and most enjoyable to all who were fortunate enough to be able to attend.

With kind regards to all the members of your Association, and best wishes for its continued success, I am,

Sincerely and gratefully yours,

SCOTT M. LOFTIN.

Mr. Joe Crider, Jr.
650 South Spring Street,
Los Angeles, California.

Lest we, as hosts, might seem immodest if we attempted to tell how our efforts were received, I give you the words of Hon. Scott M. Loftin, who headed the caravan which trekked to our house from every State in the Union.

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LOS ANGELES BAR ASSOCIATION

(City and County—Organized 1888)

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It is only natural that ordinary courtesy would impel a guest to write and thank a host for his efforts, but our Association should value highly the expression, "the most delightful and generous hospitality that has ever been extended to the American Bar Association within my experience, and I have been attending the meetings for something like twenty years."

Our Association should thrill with pride at this evaluation of its efforts by its guests. Knowing Mr. Loftin as I do, I know that he felt and meant exactly what he said.

The members of our Association did their work, and did it well, and the knowledge that our guests returned to their homes with nothing but praise is sweet compensation.

Everybody did his, or her, part willingly, and with a smile; each little thing that was done fitted into a carefully studied pattern.

We are especially indebted to the ladies of our profession and the wives of lawyers, whose feminine touch and artistry was so much in evidence, and are also grateful to the press and those who are not lawyers, who so generously aided our cause.

Everything has been paid for.

I shall not attempt to chronicle all that was done—that is written in your hearts and in the hearts of our brothers and friends from afar. The result has been to crystallize a feeling that the profession to which we have dedicated our lives, is more worth while than ever, and that we have done a good work and advanced our professional and material well-being.

On behalf of our Association I thank all who lent their aid to this accomplishment.

Let us look and move straight ahead.

JOE CRIDER, JR.,
President, Los Angeles Bar Association.

A.B.A. BORN ANEW HERE

Recent Convention made History by Adoption of New Coordination Plan; Wm. L. Ransom Elected President; Boston Chosen as 1936 Convention City; Hospitality Praised

By W. L. Roper *

A NEW unified bar, truly representative of the nation's practicing lawyers, purged of shysters and pledged to uphold the Constitution—

A militant, aroused organization setting forth like a Sir Galahad, not only to solve its own professional problems but to lead America out of its legal and political morasses.

Thus might one describe in epitome the numerous idealistic objectives approved by the American Bar Association at its fifty-eighth annual convention here, July 15-20.

In striking contrast to that wintry meeting of the Connecticut State Bar in January, 1878, when the conception of a national organization of American lawyers received its first impetus, was the recent gathering in Los Angeles with a summer sun setting a new heat record. But the meeting was none the less historic.

For a new American Bar Association was born here during the convention. It occurred when delegates, crowding the Biltmore Theater on the afternoon of July 18, voted overwhelmingly to instruct a special committee on reorganization to draft amendments to the Association's constitution to provide for "organic connection with state bar associations."

The committee was requested to have the amendment ready to submit to the Executive Committee and the General Council at their midwinter meeting in November. A further instruction was that the committee seek to provide for some degree of proportional representation of state bar associations in the new American Bar Association.

CHANDLER IS CHAIRMAN

Jefferson P. Chandler, of Los Angeles, was named chairman of this special committee on coordination. This too was fitting, for it was the A. B. A. standing committee on coordination, of which he is chairman, which had paved the way for this closer unity of the lawyers of the country.

This concrete plan for tying together local, state, and national bar associations into a new and united whole was the culmination of five years of careful planning and intensive work on the part of the standing coordination committee.

As far as the advancement of the legal profession is concerned, it was the big news of the convention, although it may have been partially eclipsed in the current news reports by certain political ballyhoo.

Credit must also be given tall, lanky Harry P. Lawther, of Dallas, Tex., who with his incisive wit and terse argument, stampeded the American Bar Association convention into a quick decision on the adoption of this new plan for expanding the power, authority and influence of the A. B. A. In five minutes the Texan got action instead of talk, and apparently changed the course of history in the A. B. A.

Others who spoke at this special session on coordination problems, after Chairman Chandler had submitted his committee's report, setting forth four tentative plans, were Walter P. Armstrong of Memphis, Carl B. Rix of Milwaukee, Dean Charles E. Clark of the Yale Law School, and Earle W. Evans of Wichita, Kan., past president of the A. B. A.

* Written for The Bulletin.

Further evidence of the democratic tendencies in the organization was exhibited in the spirited election contest, which marked the selection of a new president. It was the first time in the fifty-eight years of the A. B. A.'s history, that the Association's members had failed to accept the General Council's nominee for president without a contest.

And William L. Ransom, of New York, the new president, elected by a "walking vote" over James M. Beck, Philadelphia lawyer and former Solicitor General of the United States, re-echoed this idea of democracy in his inaugural speech.

"The American Bar Association can be made whatever the practicing lawyers of the United States want it to be," said the new president. "It belongs to them. Our great need is to know what they want. To that end I shall be ready to attend state bar meetings whenever I am wanted, to learn as much as possible of the desires of the lawyers of the country concerning what our work shall be."

The contest over the presidential election started when the report of a "slate" by the General Council was presented to the convention by George H. Smith, of Salt Lake City, General Council Chairman. It broke with full force when Smith moved that nominations be closed and the ballots cast for the ticket by the secretary—the ticket including Ransom for president.

CRUMP IN LEADING ROLE

Resentment of what seemed to be an effort to prevent other nominations was instant, and several delegates arose to protest. After half an hour of confusion and argument, Guy Richards Crump, of the Los Angeles Bar, a member of the General Council, induced Smith to withdraw his motion and permit nominations from the floor.

Former Solicitor General Beck, who had won many ardent supporters by his brilliant speeches on Constitutional law during the convention, was then nominated by Alonzo Huff, of Springfield, Ill., who dramatically identified his city as the one in which the great Abraham Lincoln first practiced.

The walking vote was 209 to 178, in favor of Ransom. John H. Voorhees, Sioux Falls, S. D., and William P. McCracken, Jr., of Washington, D. C., were re-elected treasurer and secretary, respectively, without opposition.

Newly elected vice-presidents are: Claire Bird, Wausau, Wis.; James R. Keaton, Oklahoma City, Okla.; J. Weston Allen, Hartford, Conn.; Charles L. Miller, Lancaster, Pa.; Robert Tunstall, Richmond, Va.; Murray Shoemaker, Cincinnati, O.; Forney Johnston, Birmingham, Ala.; C. E. Gates, Seattle, Wash., and George Rhodes, Shelbyville, Ill. J. H. Corbett, Suffolk, Va.; Jacob M. Lashley, St. Louis, Mo., and F. T. Bassil, Milwaukee, Wis., members of the executive committee.

LOFTIN SOUNDS KEYNOTE

At the opening general session of the convention, Scott M. Loftin of Jacksonville, Fla., the retiring president of the A. B. A., sounded one of the keynotes of the convention when he designated the Supreme Court as the highest authority in the United States, and urged upholding the Constitution.

"As lawyers it is our duty at all times to build in the minds of the American people by precept and example respect for the Constitution and decisions of our courts," he said. "Their decisions will be accepted without question or resentment only when the people of America recognize the supremacy of the Constitution and the sovereignty of law."

"When there is agitation, following a judicial pronouncement that a statute is in violation of the Constitution, for a change in the judicial system, which would take away, directly or indirectly, the court's power in this respect, the bar should condemn vigorously any such proposal, should mobilize all of its

influences and forces to defeat any such attempt and should seek to preserve inviolate the power of the court as it exists today. It is this power that safeguards the Constitution and the rights of the states and the people thereunder. If a change in our organic law is deemed desirable, the method provided by the Constitution is the proposal of an amendment which can be adopted after thorough discussion and deliberation of the people."

URGES JUDICIAL SELECTION REFORM

President Loftin advocated the adoption by every state of an improved plan for judicial selection.

"Every state should have a plan that will attract to the courts the best talent and the most worthy lawyers so that justice under the law may be administered without fear or favor by an able, fearless and independent judiciary," he declared.

A special committee, created a year ago to study "federal laws and policies as they affect the liberties and rights of the American citizen," failed to agree on a clear-cut pronouncement and the matter was referred back to committee for further study. A report was ordered made on this matter at the forthcoming November meeting of the Executive Committee and Council in New York.

The crusade against "Roman holiday" trials and unethical publicity seeking by attorneys, a charge that arose out of the Bruno Hauptmann case, also ended with action postponed until the November meeting.

OPPOSE AAA PROVISIONS

The convention delegates voted disapproval of proposed tax provisions of the Agricultural Adjustment Act. Their opposition was to passage of any laws which would prevent court action to collect refunds on AAA processing taxes.

Boston was selected as the 1936 convention city of the A. B. A. by the executive committee of the association, after considering the bids of Kansas City, Columbus, O., New Orleans, and El Paso. Dean Roscoe Pound of Harvard Law School presented their invitation for Boston. He said the general plan was to hold next year's convention in conjunction with the 300th anniversary celebration of Cambridge University. The last Boston bar convention was held in 1919.

HOSPITALITY PRAISED

The hospitality shown the visiting delegates by the Los Angeles Bar Association and the city of Los Angeles was warmly praised, and an official resolution was adopted, expressing appreciation for courtesies and entertainment. The pageant, "THE MAKING OF THE CONSTITUTION," which was presented by the Los Angeles Bar Association as a climax to the entertainment program, and accompanied by a speech of farewell by Joe Crider, Jr., president of the local association, also came in for much praise.

Many veteran attorneys, who have attended every convention of the organization for years, declared that the one just held was the best publicized in the history of the association. While 2026 attorneys were registered, many more attended but neglected to visit the registration room.

Among those receiving praise for the success of the convention's local entertainment program were Gurney E. Newlin, chairman of the committee on general arrangements, Joe Crider, Jr., president of the Los Angeles Bar Association and vice-chairman of the committee; Norman A. Bailie, president of the State Bar of California; Guy Richards Crump, Jefferson P. Chandler, all also vice-chairmen, and Ewell D. Moore, chairman of the publicity committee for the local association.

Indicative of the visiting delegates' appreciation was the generous applause given President Crider of the Los Angeles Bar Association when he made the "farewell" speech at the pageant, "The Making of the Constitution," presented in the Philharmonic auditorium Friday night, July 19.

National Junior Bar Convention at Los Angeles Marks Progress

By Charles E. Sharritt, of the Los Angeles Bar

OBSERVING its first anniversary, the Junior Bar Conference of the American Bar Association was ably represented at the recent convention by some 315 enthusiastic young barristers from throughout the nation.

Although the junior group is but little beyond the organizing stage, having been launched just a year ago, it definitely established itself as a potent part of national organization. During the entire week of the conclave, the juniors were active participants in the convention sessions and displayed keen interest in the plans for the organization's program for the coming year.

A spirited but friendly contest for the office of president for the ensuing year resulted in the election of Walter L. Brown of Huntington, West Virginia.

Although there was a concerted movement both by visiting delegates as well as local members to honor Grant B. Cooper of the Los Angeles bar with the presidency, Cooper gracefully declined to be a candidate. By this move the junior group put itself on record as adopting the precedent established many years ago by their elders of not selecting a president from the bar of the city in which the convention is held. It appeared quite obvious, however, that Cooper's election next year at the Boston meeting is more or less assured.

Other officers chosen by the younger group are: Joseph D. Stecher, Toledo, vice-president; William A. Roberts, Washington, secretary, and the following named to the national council: Curtis Shears, New York; Burt Harris, Pittsburgh; Henry Bane, Durham, N. C.; Harold B. Wahl, Jacksonville, Fla.; and Robert W. Pharr, Memphis.

In determining on a program for the coming year, the junior group adopted the recommendations of Secretary Roberts, who outlined five major objectives which he suggested the body strive to accomplish.

As the first objective, the juniors will seek to establish a system whereby the sections and committees of the American Bar Association will supply material to the Junior Conference regarding their proposals, which proposals the Conference will then undertake to explain to the American people through speakers' bureaus, the press and other methods.

Second, the Conference will work for the establishment by state legislatures of drafting and research bureaus to the end that crudely drafted statutes may be prevented from enactment, and legislatures will not be tempted to pass "canned bills."

The third concerns disciplinary action within the profession. It is proposed that the younger lawyers conduct the prosecution in matters of discipline against offending attorneys, but leave the judgment and decision to the older members. By this method it is hoped that the younger members will develop a greater sense of responsibility for the correction of evils within the ranks.

Fourth: The setting up of employment bureaus for young lawyers and the development of a more businesslike system of fixing the compensation to be paid for legal service.

The fifth object is to study and develop the relationship between the junior sections of the State Bar associations and the junior section of the American Bar Association.

Definite proof that the juniors have made their organization an active and valuable asset to the A. B. A. was cited by President Scott Loftin in his remarks regarding the membership drive the past year.

What About the Women?

By Edna Covert Plummer of the Los Angeles Bar

ANSWERING an inquiry as to what the active women lawyers discussed at the recent American Bar Association convention, what are their objectives and their purposes, I would say that women delegates and visiting women lawyers impressed me as having the same objectives as have the male members of the aggregation. They are first of all, *members* of the Bar; their hopes, too, are for improved, efficient and effective organization in local, State and American Bar. In order to effect such organizations, however, there must be some methods adopted for exchanges of thoughts and ideas oftener than once a year, and then in the midst of a bedlam of activity. "We come, we become enthused, we go home, and nothing more until the next Bar meeting."

As one delegate aptly expressed it, you cannot buoy up enthusiasm for twelve months at a time with no float but the memory of the last annual Bar meeting. There must be a constant contact and constant activity.

They, too, in company with their brothers in law, deplore the parole system with its present abuses. I might say that in almost every discussion whether groups were large or small, two topics were sure to be brought forth for attention:

Paroles, and

Judges and their election.

To my way of thinking it might be a good thing to have a level-headed woman lawyer on every parole board. Such a member of the board "would not be satisfied with a merely superficial knowledge, or rely upon a report containing but a few notes handed in by a secretary. The *details in each instance* would be obtained and they would govern her acts."

As for selection of the members of our judiciary, they seem to be unanimous in that there is much to be said against popular elections, but there was no unanimity in their suggestions as to manner of appointment. It is of interest, however, to note that the plan proposed by Cleveland (Ohio) Bar Association seemed to meet with decided favor, except that a long term of office (6 years is the proposed term) seems to meet with approval.

However, the one section that seems to be most attractive and has held as much if not more attention than any other at the last annual meetings, is the section of International and Comparative Law. That the validity of foreign divorces should interest women is to be expected, but the extent to which extradition matters, Trade Agreement Acts, and the activities of the Pan American Union conferences play their part, is surprising.

The women members are working actively and unceasingly for the same goal as are the men, they have taken the same oath, they are operating under the same code of ethics, their object is to help work out the problems confronting the legal profession. Their objects and purposes are to help bear the burdens, work out the problems, and perfect the Bar Associations to which they belong. For as before stated, they are first of all loyal members of the Bar, not "women members," but "members."

The women are loyal to the Bar, and express it constantly by word or action; "it's our Bar Association, may it always be right, but right or wrong, it's our Bar Association."

Ambulance Chasing

By John E. Biby, of the Los Angeles Bar

BECAUSE of ambulance chasing, the legal profession has been the target of many opprobrious expressions. Prior to incorporation of The State Bar of California, all efforts made to discourage this practice in the State of California, were by voluntary bar associations which had no power to punish violators. Among the most active of these associations was the Los Angeles County Bar Association.

Prior to 1931, there was no law in the State of California expressly prohibiting ambulance chasing. In that year, two statutes were adopted¹ the first of which makes it a misdemeanor for any person to solicit the collecting of a personal injury or death claim arising within the state, with the intention of instituting an action thereon outside the State of California. The other statute makes it a misdemeanor punishable by a fine of not less than \$100.00 nor more than \$500.00, or by imprisonment for not less than one month, nor more than six months, or by both fine and imprisonment: (1) for any public officer, servant or agent; (2) for any employee of a bail bond company, or (3) for any other person, firm, association or corporation, to act as a runner or capper or solicit business for an attorney in and about any jail, hospital, court or other public place.

LAW FALLS SHORT

This latter statute evidences an advance over the previous condition but it falls short of providing a much needed remedy for the prosecution of lay ambulance chasers not employed by or acting as agent of an attorney.

Prior to 1931 ambulance chasing became a lucrative activity not only for such lawyers as were thereby willing to debase themselves and their profession, but for a larger number of organized lay chasers doing business as adjustors of damage claims. These lay organizations usually operated under euphonious fictitious names which did not disclose the identity of the persons connected with them. Among these organizations named in the decisions of our appellate courts, pursuant to procedure initiated by The State Bar, are West Coast Claims Bureau², Golden State Adjustors' Corporation³, Royal Adjustment Company⁴, General Claims Bureau of Southern California⁵, Standard Adjustment Organization⁶, Prudence Service Company,⁷ *et al. ad infinitum, ad nauseum.*

CHASERS FORMERLY FLOURISHED

For many years these lay organizations of ambulance chasers flourished in large numbers. They maintained large, expensive suites of offices with numerous employees and in most cases had an association with one or more lawyers who rendered legal services to the extent directed by these lay chasers respecting cases which they had solicited. In Southern California the activities of these lay chasers grew rapidly and soon exceeded by far the activities of the lawyer chasers. Learning of an accident in which a person had been injured, the chaser contacted the injured person so soon after the accident that it was com-

1. Stats. 1931, pages 2027 and 2198.
2. 212 Cal. 225.
3. 212 Cal. 54.
4. 212 Cal. 550.
5. 212 Cal. 115.
6. 210 Cal. 362.
7. 294 Pac. 1057.

monly said the chaser followed the ambulance to the hospital, hence the term "ambulance chaser" arose.

The contact being established, the chaser immediately solicits the execution of a contract authorizing him to settle the claim, collect the damages, and retain a portion thereof for his services, in many instances fifty per cent. In order to secure the contract he promises to pay all hospital, medical and other expenses, including court costs and attorney fees which the contract authorizes him to incur if an attorney is needed. Few contracts contain these provisions and upon settlement of a claim, the injured party often learned that he had obligated himself to pay all expenses which often were more than the amount he received from the settlement.

LAY CHASERS' OPERATIONS

With authority from the injured party to effect a compromise of his claim for damages, the chaser first ascertains whether the other party to the accident is financially responsible or insured. Either condition existing, he presents his claim, usually in an exorbitant amount, but ultimately settles for whatever he can get without filing an action in court. Lay chasers seem to work on the theory that it profits more to settle many cases even for a small amount without litigation, than to litigate. With the proceeds of one settlement in pocket, they prosecute another claim, many of which are at all times available to them through the activities of their solicitors.

If a chaser learns that either party to an accident is not financially responsible or is not insured, he drops the case at once. When he cannot settle a claim he believes to be good, he then calls in his lawyer associate and through their combined efforts, file a complaint in court. Often such complaint is filed without any intention of prosecuting the action to trial. It is filed for the purpose and with the hope that a settlement can thereby be coerced.

STATE BAR DISCIPLINES

Formerly, the lawyers who prepared the complaint seldom interviewed the claimant but relied entirely upon the representations of the law chasers as to his employment, the facts relating to the asserted negligence, the extent of the injuries, etc. It was once the custom for the lawyer and the chaser to agree upon a division of the fee to be paid the chaser by the injured person for the services of the lawyer. As a result of the many prosecutions initiated by The State Bar, chasers, both lay and lawyer, are more diligent in their efforts to hide the facts. Now, the lawyer usually interviews the claimant brought to him by the lay chaser, before an action is filed, and he makes the agreement for his fee directly with the claimant instead of agreeing upon a "split" with the lay chaser. Now, the chaser is more often paid by the attorney but in some cases he is paid directly by the claimant.

The State Bar, through its various disciplinary committees, is endeavoring to discipline lawyers who engage in ambulance chasing activities and with the approval of the Supreme Court, it may suspend their rights to practice law or disbar them.

In 1931,⁸ a law was enacted making it a misdemeanor for an agent of a lawyer to solicit any business on his behalf. Neither the rules of discipline of The State Bar nor any statute expressly authorize the punishment of lay chasers as such.

The City of Los Angeles, in 1933, adopted an ordinance⁹ which makes it a misdemeanor for any person to solicit employment to prosecute or settle a claim for damages arising out of tort. This is the first law so far as we know, adopted in the State of California under which lay chasers might be prosecuted.

8. Stats. 1931, page 2198.

9. No. 73706.

ADMINISTRATIVE COMMITTEE PROSECUTES

In December, 1933, The State Bar of California appointed a committee known as Special Administrative Committee No. 1, commonly called "Ambulance Chasing Committee." This committee is composed of the following members: John E. Biby, chairman; Earle Daniels, vice-chairman, and W. E. Simpson, secretary. The special duty was imposed upon this committee to investigate and bring about the prosecution of ambulance chasers. Its powers were broad and include the right to issue subpoenas. The activities of this committee led to the discovery of the extent of the activities of the lay chasers and the necessity for adequate procedure by which they might be prosecuted. Prosecutions of ambulance chasers as the result of this committee's activities have been made through proceedings before disciplinary committees of The State Bar; for contempt of court; under the Los Angeles city ordinance mentioned above; and felony indictments by the grand jury on the theory the accused persons had conspired to commit a misdemeanor, namely: violation of the statute prohibiting an agent of an attorney to solicit legal business on his behalf.

The prosecutions above mentioned have brought about a very substantial decrease in the activities of ambulance chasers, particularly lay chasers. The large number of lay chasers doing business in Los Angeles County have closed their elaborate establishments and many of their members have departed beyond the boundaries of the State. Others, after serving jail sentences, or paying heavy fines, or both, are now engaged in other pursuits. Some are engaged in ambulance chasing outside the city of Los Angeles where no anti-capping ordinances are in effect. The State Bar supported the adoption by our late Legislature of Senate Bill No. 15 which met an untimely death as the result of a pocket veto.

GOVERNOR FAILED TO SIGN BILL

This bill is broad in its terms and makes it a misdemeanor for any person, firm, copartnership, association or corporation or for the officers, agents, servants or employees of any such person, firm, copartnership, association or corporation, directly or indirectly, individually or by agent, servant or employee to solicit any person injured as result of an accident, his administrator, executor, heir, or assigns for the purpose of representing such person in making claim for damages or prosecuting any action or cause of action arising out of any personal injury claim against any other person, firm or corporation, or to solicit in any manner whatsoever any other kind of law practice or law business for himself or for any other person for any compensation, direct or indirect, punishable by fine not exceeding \$1000.00 or by imprisonment in the county jail for a term not exceeding one year or both.

The failure of the Governor to sign this bill will greatly retard the efforts of The State Bar to eliminate ambulance chasing and it is to be hoped that this bill will become a law after the next session of our Legislature.

The increased ambulance chasing activities of certain lawyers indicates that former lay chasers have become associated with them. Several such lawyers are now under investigation. The public and all members of The State Bar may be assured that The State Bar of California, at considerable expense, is making an earnest and vigorous effort to abolish ambulance chasing. A report of any suspected activities of this nature made to any member of the committee above named or to The State Bar office in the Rowan Building, telephone Michigan 9551, will be investigated without delay.

Dangerous and Defective Streets and Grounds

Public Liability Arising Therefrom. Menace to Taxpayers

By Frederick von Schrader, of the Los Angeles Bar, First Assistant City Attorney

(Continued from July Bulletin)

THE *Hook* case was followed by another rather extreme case—that of *Edwards v. City of San Diego*, 126 Cal. App. 1, decided by the Fourth Appellate District, in which the Supreme Court also denied a hearing. In that case a girl of 19 years of age was struck and killed by the falling top of a palm tree, in the Plaza, a small public park in the heart of the business section of San Diego. A verdict of \$20,000 was returned by the jury, which was later reduced by the court to \$12,000. The court ruled that the question of notice to the city was one of fact for the jury. The superintendent of parks testified that there were no symptoms of disease, such as dry rot, discernible in the palm tree, which in his opinion, would have caused it to fall. Other witnesses testified that on various occasions they had observed this particular tree from the ground and were unable to see anything wrong with it. Witnesses for the plaintiff testified to the contrary. Under these facts, it seems plain that the notice of a dangerous and defective condition charged to the city under the act is extended to a point beyond what any inspection by city officers would disclose. In fact, the District Court of Appeal rules, in effect, that the inspection by the city officials which fails to disclose any dangerous or defective condition still imputes notice to the City, which is in direct conflict with the provisions of the act, requiring notice. So, we have the rule presented in the *Edwards* case that even though inspection by the city officials does not disclose any defective or dangerous condition, nevertheless the city is still charged with notice and becomes liable. We submit that this construction practically nullifies the defense of notice set up in the statute, and if not curtailed by our Supreme Court will constitute a form of beneficent insurance of the safety of the traveling public far beyond the ability of the taxpayers to pay. In fact, as we have stated, if the City of Los Angeles is to be forced to pay all claims of this character, it is most doubtful if it could raise the money without a special tax levy to meet such tort judgments. Other cities, particularly the larger ones, are in the same predicament, with a constantly-growing liability.

The last extreme case to which I will make reference is that of *Barrett v. City of Sacramento* (1933), 128 Cal. App. 708.¹³ It is a matter of note that the Supreme Court, in denying a hearing, had Justices Seawell, Shenk and Preston dissenting.

A judgment of \$4,000 was rendered in favor of plaintiff for personal injuries sustained when she fell upon a sidewalk. The defect in the sidewalk complained of was a broken area near the center thereof, irregular in outline, approximately twelve inches across and about three-eighths of an inch deep. The city on its appeal contended that the break was a "mere trifling irregularity" and "not, therefore, such a dangerous or defective condition as comes within the purview of the statute, and that damages from an irregularity so slight could not reasonably be anticipated by the city and hence its existence showed neither an unsafe condition, within the meaning of the statute, would not constitute notice of an unsafe condition, nor want of ordinary care because of its existence." The grounds for reversal were swept aside by the District Court of Appeal, upon the authority of the *Hook* and *Dawson* cases.

13. See, also, *Boyce v. San Diego High School District* (1932), 215 Cal. 293, wherein the Supreme Court cited *Dawson v. Tulare Union High School*, 98 Cal. App. 138, with approval.

THE BETTER RULE

As we have indicated, certain jurisdictions have not gone as far as the cases we have cited. In fact, in a well-rendered opinion of the District Court of Appeal of the Fourth Appellate District, in the case of *Beeson v. City of Los Angeles* (1931), 115 Cal. App. 122, the court, in passing on the statute, stated (at p. 132):

"In all of the cases thus far decided the injured party was using the street in which he was injured, or the property which caused the injury, in the usual and ordinary manner in which it was contemplated that the street or property would be used. We are of the opinion that in passing and adopting section two of the act approved June 13, 1923, the Legislature intended to limit the liability of the city for damages resulting from defective streets, works or property to damages suffered in the ordinary, usual and customary use thereof. As was said in the case of *Commonwealth v. Allen*, 148 Pa. St. 358 [33 Am. St. Rep. 830, 16 L. R. A. 148, 23 Atl. 1115]: 'As a general rule, highways and bridges are constructed for ordinary use, in an ordinary manner, and not for an unusual or extraordinary use, either by crossing at great speed or by the passing of a very large and unusual weight. A township is not bound to do more than to so construct its bridges as to protect the public against injury by a reasonable, proper, and probable use thereof, in view of the surrounding circumstances, such as the extent, kind, and nature of the travel and business over them.'"

The Court also stated:

"We do not believe that the city is required to guarantee the safety of its streets or other public works when they are used for unusual purposes inconsistent with those for which they were intended."

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In *Watson v. City of Alameda* (1933), 219 Cal. 331, the Supreme Court reversed the District Court of Appeal and the lower court in holding the city liable for a dangerous or defective condition of the public street because of leaving wet paint without barricade or warning sign, upon which paint plaintiff slipped and fell, sustaining serious injuries. Mr. Justice Langdon, writing the opinion of the court, stated (at page 333):

"The municipality is not, under this statute (of 1923), liable in the same manner as a private corporation for negligence of its employees; *nor is it enough to show a dangerous condition of property.* The municipality must have had notice and have failed to exercise its opportunity to remedy the condition. The theory of the act seems to be that liability is imposed, not alone for the dangerous condition, but for the failure to remedy it upon knowledge or notice thereof. The elements of knowledge or notice are logically essential to show culpability in failure to remedy the condition, and proof of one or the other is necessary to recovery."

The Supreme Court here also draws the distinction between a negligent act of the employee of the municipality, which was the direct cause of the injury, and upon which no municipal liability exists and the dangerous or defective condition of the street. Of course, it is plain that the negligent act of the employee did, in fact, create the dangerous or defective condition of the street, but that condition was not known to the city or its responsible officers. The distinction, however, on analysis is a close one. The court said that the case was distinguishable from the *Dawson*, *Boyce*, *Benton* and *Hook* cases, in that in those cases "either actual knowledge or obvious and long-continued neglect sufficient to constitute notice" was shown.

In *Brooks v. City of Monterey*, 106 Cal. App. 649, the District Court of Appeal of the First Appellate District held practically to the contrary. The Supreme Court denied a petition for hearing.

The facts were that an automobile driver, in an intoxicated condition, drove his car over a declivity about 13 feet in height above the waters of Monterey Bay, said declivity being the terminus of Reeside Street, which was unguarded and unlighted and without barriers or signs.

The complaint alleged that by reason of these facts the street was in a dangerous and defective condition. The court said (at p. 654):

"That the liability under the above act of a county, municipality or school district for injuries resulting from the dangerous or defective condition of the public streets, highways, or property is based upon the negligence of its agents or servants, and that contributory negligence is a defense to such actions, was in effect held in the following cases: *Huff v. Compton City School District*, 92 Cal. App. 44; *Gorman v. County of Sacramento*, 92 Cal. App. 656; *Dawson v. Tulare Union High School District*, 98 Cal. App. 138. Moreover, the rule is general that the liability of a municipal corporation for injuries from defects or obstructions in its streets is for negligence only; *that it is not an insurer of the safety of travelers, but is required to exercise ordinary care to maintain its streets in a reasonably safe condition for those using them in a proper manner, and that contributory negligence precludes a recovery.*"

In the *Brooks* case the city had constructed the street in the manner outlined. In the *Watson* case the Supreme Court stated that the effect of the distinction between the dangerous and defective condition of the street resulting from disrepair or neglect and the dangerous condition resulting from actual construction and improvement would be "that the municipality would, in all governmental work on public streets, buildings, grounds, etc., be liable for the negligence of its employees in the same manner as if the work were done in its proprietary ca-

capacity—that is to say, in the manner in which a private corporation would be liable.” But the court held “The municipality is not, under this statute (of 1923), liable in the same manner as a private corporation for negligence of its employees.”

The *Brooks case* also stated “that mere abstraction or lack of attention to the dangerous condition of a public way, even by one intoxicated, cannot be assigned as contributory negligence.”

It is thus apparent that if this rule is followed, the defense of contributory negligence is in effect denied the public body, and the erroneous doctrine is further announced that the dangerous or defective condition of the public streets, highways or property is not to be based upon the construction of the statute itself (requiring notice, for example), but liability is predicated upon any accident occurring even when the party injured or killed is intoxicated. This is contrary to the general rule that no liability for tort exists upon the part of the sovereign power except where it has so designated or consented to the creation of such liability, and that consent must be strictly interpreted.

The *Watson case*, as the latest adjudication of our Supreme Court upon the subject, does not discuss the law in detail, and leaves the abstract principles far from solved. In August, 1934, the Appellate Department of the Superior Court for the County of Los Angeles affirmed a judgment of the Municipal Court in the sum of \$890.00 and costs against the City of Los Angeles for an alleged dangerous and defective condition of the sidewalk consisting of a small hole in a sidewalk and merely cited the extreme cases decided by the various District Courts of Appeal which we have criticised as not in conformity with the statute, entirely ignoring the Supreme Court's decision.¹⁴ In fact, such a condition of a sidewalk should not be considered, as a matter of fact or law, a dangerous and defective condition. We base this argument upon the fact that it is impossible for public bodies—the large cities particularly—to remedy these small defects, and that, as a matter of law, the rule should be well established, as the *Brooks case* states, that a municipality is only required “to exercise *ordinary care* to maintain its streets in a *reasonably safe* condition for those using them in a *proper manner*.” This is the general rule throughout the United States.

Thus, 43 C. J., p. 998, §1785, states:

“The liability of a municipal corporation for injuries from defects or obstructions in its streets is for negligence, and for negligence only; it is not an insurer of the safety of travelers, and is not liable for consequences arising from unusual or extraordinary circumstances which could not have been foreseen, but is required to exercise ordinary or reasonable care to maintain its streets and sidewalks in a reasonably safe condition for travel by those using them in a proper manner.” (Citing many authorities.)

McQuillin, in his work on Municipal Corporations,¹⁵ also states:

“In brief, the liability of the municipality is founded on its failure to exercise ordinary care to keep its streets reasonably safe for travel and to remedy a condition likely to be dangerous.”

In conclusion, it seems apparent that the extreme cases of our District Courts of Appeal should be modified to conform to the better rule announced by these general authorities and held to be controlling in some cases by some of our higher courts. If this is not done, the liability now imposed by these decisions and technically controlling will cost the larger cities staggering sums. The taxpayer, as usual, will wonder where his tax dollar goes and this liability will substantially be the answer.

14. *Cannon v. City of Los Angeles*, Superior Court No., Civ. A. 2501; Trial Court No. 315, 458, citing the *Hook*, *Dawson* and *Boyce* cases.

15. Vol. 7, Sec. 2908, page 25.

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